SUPREME COURT OF THE U[illegible]

OCTOBER TERM, [illegible]

No. 98.

JOHN W. COFFEY, CLAIMANT OF ONE [illegible] AND OTHER ARTICLES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 92.

JOHN W. COFFEY, CLAIMANT OF ONE COPPER STILL AND OTHER ARTICLES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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1 Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, February 20th, 1882.

Present: Hon. Jno. W. Barr, judge of the United States for said district.

Information.

UNITED STATES *vs.* ONE COPPER STILL, &c.

Be it remembered that heretofore, to wit, on the 15th day of August, 1881, came the attorney for the United States and filed in the clerk's office of our said court his information in the above-styled case.

Which said information is as follows, to wit:

UNITED STATES OF AMERICA, }
District of Kentucky, } *ss:*

In the Circuit Court of the United States within and for the Sixth Circuit and District of Kentucky, held at Louisville.

To the hon. judges of the circuit court of the United States in the district aforesaid:

The information of Geo. M. Thomas, Esq., attorney of the
2 United States within and for the district of Kentucky, who comes here in his proper person and in the name and behalf of the United States of America, and of all other persons concerned, propounds and gives the said judges to understand and be informed: That on the 8th day of February, 1881, at Monticello, Wayne county, in the district of Kentucky, on land, F. V. Logan, deputy collector of internal revenue for the eighth collection district of Kentucky, did seize the following chattles, goods, wares, and merchandise, and property, to wit: one copper still and worm and other distillery apparatus, one distillery, with all its appurtenances, consisting of boiler, engine, copper doubler complete, with 65 tubs; also 22 barrels and two pieces of apple brandy, estimated at 850 gallons, said to be the property of John W. Coffey, of Monticello, Wayne Co., Ky., and now has the same in his custody at Monticello, Wayne Co., Ky., at the district aforesaid, as being forfeited to the United States for the causes hereinafter mentioned. For that, heretofore, to wit, on the first day of February, 1881, at the district of aforesaid, said John W. Coffey did have said still and worm, and distillery, engine,
3 boiler, and other distilling apparatus under his control and set up, and was engaged in carrying on the business of a distiller, and did then and there change and alter the stamps, marks, and brands on certain casks and packages containing distilled spirits, and did put into certain casks and packages spirits of greater strength than was indicated by the inspection mark thereon, and did fraudulently use casks and packages having inspection marks and stamps thereon for the purpose of selling other spirits, and spirits of different quality and quantity from the spirits previ-

ously inspected therein, and then and there attempted to defraud, and did defraud, the United States of the tax on the spirits distilled by him, the said Coffey.

Whereby and by force of the statute in such cases made and provided the said goods, chattels, wares, merchandise, and property became and were forfeited to the uses in the said statute specified. The said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true, wherefore he prays that process of law may issue against said property, goods, wares, chattels, and merchandise to enforce the forfeiture thereof, and requiring notice to be given to all persons concerned in interest to appear and show cause on a day named in the process
4 why such forfeiture should not be decreed, and prays other proper relief.

GEO. M. THOMAS,
U. S. Attorney for District of Kentucky.

Upon which information there issued the following monition & attachment:

Monition & Attachment.

DISTRICT OF KENTUCKY, *ss:*

The President of the United States of America to the marshal of the Kentucky district, Greeting:

Whereas an information has been filed in the circuit court of the United States for the district of Kentucky at Louisville on the 15th day of August, in the year of our Lord one thousand eight hundred and eighty-one, by Geo. M. Thomas, Esquire, attorney for the United States for said district, on behalf of the United States of America, against one copper still and worm and other distilling apparatus, one distillery, with all its appurtenances, consisting of boiler, engine, copper doubler complete, with sixty-five tubs; also twenty-two barrels and two pieces of apple brandy, estimated at 850 gallons, for reasons and causes in said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the
5 said goods, wares, and merchandise may be cited in general and special to answer the premises, and all due proceedings being had, that the said goods, wares, and merchandise may, for the causes in said information mentioned, be condemned and the proceeds thereof distributed according to law. You are therefore hereby commanded to attach the said goods, wares, and merchandise and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same or knowing or having anything to say why the same should not be condemned as forfeited and the proceeds thereof distributed according to the prayer of the said information, that they be and appear before the said court, to be held at Louisville, in and for the district aforesaid, on the first day of its next October term, then and there to interpose a claim for the same and to make their

allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, and the seal
6 of our said circuit court hereto affixed at the clerk's office of said court in Louisville, this 15th day of August, A. D. 1881, and in the 106th year of our Independence.

Attest: SAM'L B. CRAIL,
C. C. C. K. D.
By HENRY F. CASSIN,
His Deputy.

Upon which the marshal made the following return, to wit:

Marshal's Return.

Executed this monition and attachment by attaching and detaining the within-named 22 bbls. & two pieces of bbls. of apple brandy on the 11th Sept., 1881, in Wayne Co. at Monticello, and by giving due notice to all parties claiming the same by making the required publication thereof in the Louisville Commercial, and delivering to John W. Coffey & C. W. Gragg each a copy of this process at same time and place as above. S'd apple brandy I stored with s'd Gragg in Monticello. The other property named had been released and restored to s'd Coffey under an order of court herein 15th Sept., 1881.

HENRY DIVEN,
Sp'l Bailiff.
For R. H. CRITTENDEN,
U. S. M.

The foregoing return subscribed and sworn to by Henry Diven, the sp'l bailiff, this 15th Sept., 1881.

SAM'L B. CRAIL,
U. S. Com'r.

7 *Order.*

And at a term of our said circuit court held for its February term, 1881, to wit, on Wednesday, August 31st, 1881, came W. A. Bullett, assistant district attorney; came also John W. Coffey, by Sam. McKee, his attorney, and tendered his bond for costs herein, taken and acknowledged before Samuel B. Crail, a commissioner of this court, which is approved and filed.

And thereupon said Coffey filed his claim to the whole of the attached effects herein. By consent of said assistant district attorney and of said claimant, by his attorney, it is agreed that part of the attached effects herein, viz., 1 copper still, boiler, engine, doubler, and 65 tubs, are of the value of $300.

By like consent it is considered by the court that the said 1 copper still, boiler, engine, doubler, and 65 tubs may be delivered to said claimant upon the execution of a bond in double the agreed value thereof, with Elijah A. Haynes and James M. Nelson as sureties, conditioned as required by law.

Thereupon said bond, taken and acknowledged before Samuel B. Crail, a commissioner of this court, is approved and filed.

It is therefore ordered that the said attached effects, viz., 1 copper still, boiler, engine, doubler, and 65 tubs, be released from the
8 seizure and attachment thereof made by the marshal under the mesne process of this court, and restored to said claimant, and the clerk will issue the appropriate writ of restitution therefor.

The bond for costs above referred to is as follows, to wit:

Bond for Costs.

STATE OF KENTUCKY, *County of Wayne:*

We, John W. Coffey, Elijah A. Haynes, and James M. Nelson, hereby authorize Sam'l McKee to sign our names to a stipulation or bond for costs in the case of the United States *vs.* John W. Coffey, in the circuit court of the United States at Louisville, Ky., the said Coffey filing his claim to the property sought to be forfeited by the United States, & consisting of said Coffey's distillery & distilling apparatus, & 22 barrels & two pieces of apple brandy; this to be a bond merely to secure costs in said case, and we state that we have property liable to execution in this State for debt exceeding in value $500.

JOHN W. COFFEY.
ELIJAH A. HAYNES.
JAMES M. NELSON.

Signed, sworn to, and acknowledged before me this August
9 22nd, 1881.

JOHN W. TUTTLE,
U. S. Com'r, K. D.

We acknowledge ourselves security for all costs for which the claimant, John W. Coffey, may be liable in this cause.

ELIJAH A. HAYNES.
JAMES M. NELSON,
By SAM'L McKEE,
Att'y-in-Fact.

Taken & acknowledged before me this 31st day of August, 1881.

SAM'L B. CRAIL,
U. S. Com'r.

The claim above referred to is as follows:

Claim.

Circuit Court of the United States, 6th Circuit & Kentucky District.

The claim and answer of John W. Coffey, owner and claimant of the copper still, worm, and other distillery apparatus, to the libel or information of Geo. M. Thomas, attorney for the United States, against said still, worm, and other distillery apparatus, &c.

And now comes John W. Coffey, of Monticello, in the
10 county of Wayne and district aforesaid, owner of one copper still and other distillery apparatus, one distillery, with all appurtenances, consisting of boiler, engine, copper doubler, complete, with 65 tubs; also 22 barrels and two pieces of apple brandy, estimated at 852 gallons, and for answer to the information of the said Geo. M. Thomas, attorney for the United States, doth allege and propound as follows:

First. That said John W. Coffey is the true and *bona fide* owner of the said distillery and fixtures, and the said twenty-four packages of apple brandy named in said information, and that no other person is the owner thereof.

Second. That it is true said property named in said libel or information was seized by the collector of internal revenue or his deputy for the 8th collection district of Kentucky, and has since been held in custody by said collector.

Third. It is not true that on the first day of February, 1881, at the district aforesaid, this claimant, the said John W. Coffey, or at the time of said seizure named, was engaged in carrying on the business of a distiller; it is not true that he did then and there
11 change and alter the stamps, marks, and brands on certain casks and packages containing distilled spirits, and did put into certain casks and packages spirits of greater strength then was indicated by the inspection marks thereon, and did fraudulently use casks and packages having inspection marks thereon and stamps for the purpose of selling other spirits and spirits of different qualities and quantity from the spirits previously inspected therein, and then and there attempted to defraud & did defraud the United States of the tax on the spirits distilled by him, the said John W. Coffey, claimant and owner herein. And he says the allegations recited above in the said information of the said Geo. M. Thomas, attorney for the United States, and herein set out in the third paragraph of this claim and answer are untrue.

Wherefore he prays that said property be released to and restored to him.

SAMUEL McKEE,
Attorney for Claimant and Owner, John W. Coffey.

Sworn to by Jno. W. Coffey this 10th Oct., 1881.
SAM'L B. CRAIL,
U. S. Com'r.

12 The bond above referred to is as follows, to wit:

Restitution Bond.

DISTRICT OF KENTUCKY, *ss:*

We, John W. Coffey, principal, and Elijah A. Haynes and James M. Nelson, sureties, hereby authorize Samuel McKee, of Louisville, Kentucky, to sign our names to any bond required or authorized to be given in the case of the United States *vs.* One Copper Still and

Worm, Engine and Boiler, and other distilling apparatus seized in Wayne county, Kentucky, by Deputy Collector F. V. Logan, of the 8th internal revenue collection district, as the property of John W. Coffey, upon which an information has been filed in the United States circuit court at Louisville for condemnation of same, for the release of said property pending the suit as to the liability of the same to forfeiture, binding us to return the same in as good condition as it is now in if a forfeiture thereof should be adjudged, or to pay to the Government the value of same, not exceeding three hundred dollars.

Given under our hands this 26th day of August, 1881.

JOHN W. COFFEY.
ELIJAH A. HAYNES.
JAMES M. NELSON.

13 Signed and acknowledged before me this 26th day of August, 1881.

JOHN W. TUTTLE,
U. S. Com'r, K. D.

DISTRICT OF KENTUCKY, *ss:*

Personally appeared before me this 26th day of August, 1881, Elijah A. Haynes and James M. Nelson, who, being duly sworn, state that they are in the aggregate worth in property liable to execution for debt in the State of Kentucky, unincumbered, in a sum exceeding six hundred dollars.

ELIJAH A. HAYNES.
JAMES M. NELSON.

Subscribed and sworn to before me by Elijah A. Haynes and James M. Nelson this 26th day of August, 1881.

JOHN W. TUTTLE,
U. S. Com'r, K. D.

I certify the above parties are good for the amount of the bonds called for in the power of att'y annexed.

JOHN W. TUTTLE,
U. S. Com'r, K. D.

14 Circuit Court of the United States, District of Kentucky (at Louisville).

UNITED STATES *vs.* 1 COPPER STILL, &c. } Information No. 4967.

Know all men by these presents that we, John W. Coffey and Elijah A. Haynes and James M. Nelson, are held and firmly bound unto the United States of America in the sum of six hundred dollars, to be paid the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 31st day of August, A. D. 1881.

Whereas an information has been filed in the circuit court of the United States of America for the district of Kentucky on the 15th day of August, A. D. 1881, by Geo. M. Thomas, Esquire, attorney of the United States for the said district, on behalf of the said United States, against 1 copper still, &c., & other articles, for reasons and causes in the said information mentioned, and whereas the said property above described is now in the custody of the marshal of the said district, under the process issued in pursuance of the prayer of the said information; and whereas the agreed value of 1 copper still, boiler, engine, doubler, & 65 tubs is three hundred dollars:

Now, therefore, the condition of this obligation is such that in case the said property shall, by the sentence, decree, or judgment of the said court, be condemned as forfeited if the said John W. Coffey, Elijah A. Haynes, & James M. Nelson, or either of them, or the heirs, executors, or administrators of the said John W. Coffey, Elijah A. Haynes, & James M. Nelson, or either of them, shall thereupon pay into the said court the sum of three hundred dollars, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN W. COFFEY. [SEAL.]
ELIJAH A. HAYNES. [SEAL.]
JAMES M. NELSON, [SEAL.]
By SAMUEL McKIE, [SEAL.]
Att'y in Fact.

Taken and acknowledged before me this 31st day of August, A. D. 1881.

SAM'L B. CRAIL,
U. S. Commissioner.

15 The writ of restitution is as follows:

Writ of Restitution.

DISTRICT OF KENTUCKY, *ss:*

The President of the United States of America to the marshal of the district of Kentucky, Greeting:

Whereas an information has been filed in the circuit court of the United States for the district of Kentucky, at Louisville, on the 16th day of August, A. D. 1881, by Geo. M. Thomas, Esquire, attorney of the United States for the said district, on behalf of the United States of America, against 1 Copper, Still, &c., information No. 4967, praying that the same may be condemned as forfeited to the said United States; and whereas the said articles have been attached by the process of the said court, in pursuance of the prayer of the said information, and is now in your custody in virtue of the said process; and whereas also a claim has been interposed and filed in the said court by John W. Coffey, as owner of part of the attached property, and such proceedings have been thereupon had that by the interlocutory sentence and decree of the said court in this cause made

and pronounced on the thirty-first day of August, A. D. 1881,
16 the said property hereafter described was ordered to be restored to said John W. Coffey:

Therefore, you, the said marshal, are hereby commanded to release the said goods and articles, viz., 1 copper still & other distilling apparatus, consisting of boiler, engine, copper doubler complete, with 65 tubs, from arrest, and to deliver and restore the same unto the said John W. Coffey.

And what you shall have done in the premises do you make return thereof before the said court on the first Monday in October next, together with the writ.

Witness the Honorable M. R. Waite, Chief Justice of the Supreme Court, this 31st day of August, in the year of our Lord one thousand eight hundred and eighty-one, and of our Independence the 106th.

SAM'L B. CRAIL,
C. C. C. K. D.

Marshal's Return.

Upon which the marshal made the following return:

Executed this writ by delivering to Jno. W. Coffey the within-named articles.

Louisville, Sept. 8th, 1881.

R. H. CRITTENDEN,
U. S. Marshal.

Order.

And at another term of said court, held for its October term, 1881, to wit, on Monday, October 3rd, 1881, came the district attorney, and filed the proof of publication of the marshal's notice to
17 claimants in the foregoing case; and it appearing from the marshal's return on the monition and attachment that he had arrested the goods therein mentioned, and had given due notice to all persons that this court would, on this day, proceed to the trial and condemnation thereof should no claim be interposed for the same: On motion of said attorney for said informants proclamation is now made for all persons having anything to say why the same should not be condemned and sold to answer the prayer of the information to come forward and make their allegations in this behalf.

The proof of publication above referred to is as follows:

Proof of Publication.

I, R. M. Kelly, one of the publishers of the Commercial Pub. Co., state, upon oath, that the annexed advertisement was published for 14 consecutive insertions, commencing September 15 and ending on September 28th.

R. M. KELLEY.

Subscribed and sworn to before me this 3rd day of October, 1881.

A. S. DIETZMAN,
N. P., J. C.

The annexed advertisement above referred to is as follows:

Advertisement.

UNITED STATES OF AMERICA, } ss:
District of Kentucky, }

No. 4967.

18 Whereas an information has been filed in the circuit court of the United States for the district of Kentucky, on the 15th day of August, A. D. 1881, by George M. Thomas, Esquire, attorney for the United States for the district of Kentucky, who prosecutes herein in behalf of the United States against One Copper Still and Worm, and other distilling apparatus, one distillery, boiler, engine, copper doubler, 65 tubs, 22 barrels, and two pieces of apple brandy, estimated at 850 gallons, alleging, in substance, that the said articles were seized on the 8th day of February, 1881, by F. V. Logan, deputy collector of internal revenue for the eighth collection district of Kentucky, for a violation of sections 3257 and 3326 of the Revised Statutes of the United States; and that said articles became thereby forfeited to the use of the United States of America, and praying process against the same that the same may be condemned as forfeited:

Now, therefore, in pursuance of the motion, under the seal of said court, to me directed and delivered, I do hereby give public notice to all persons claiming said articles, or in any manner interested therein, that they be and appear before the said court,
19 to be held at the city of Louisville, in and for said district, on the first day of its next October term, the 3rd day of October, A. D. 1881, then and there to interpose their claims and to make their allegations in that behalf.

R. H. CRITTENDEN,
U. S. M., K. D.

GEORGE M. THOMAS,
U. S. Attorney.

And it appearing to the court that John W. Coffey has filed his claim to the whole of the attached effects herein, it is now ordered that the default of all other persons be now entered.

And on another day of said term of said court, to wit, on Friday, October 7th, 1881, came the district attorney, and by leave of court filed his amended information herein.

The amended information above referred to is as follows:

Amended Information.

U. S. *vs.* 1 COPPER STILL, &c.

Geo. M. Thomas, by leave of the court in that behalf first obtained, amends his information herein, and gives the said
20 judges further to know that on the day and year aforesaid, at the district aforesaid, the said John W. Coffey was engaged in carrying on the business of a distiller, and that he, the said John

W. Coffey, did then and there defraud and attempt to defraud the United States of the tax on part of the spirits distilled by him, and that the said distillery and distilling apparatus were then and there used by him, and that the said 22 barrels and two pieces of barrels of apple brandy, to wit, distilled spirits, were found on the distillery premises of the said John W. Coffey, distiller as aforesaid, contrary to the form of the statute in such case made and provided.

Second. And that the said 22 barrels and two pieces of barrels of distilled spirits were then and there subject to a tax imposed by law, which said tax had not then been paid, and were then and there found in the possession, custody, and control of the said John W. Coffey for the purpose of being removed and sold by him in fraud of the internal revenue laws, and with design of avoiding the payment of said tax, contrary to the form of the statute
21 in such case made and provided.

Third. And that the said John W. Coffey was on the day and year aforesaid at the district aforesaid an authorized distiller, — then and there knowingly and wilfully omit, neglect, and refuse to do or cause to be done certain things required of him by law in the carrying on and conducting of his said business, to wit, did knowingly and wilfully omit, neglect, and refuse to stamp and brand, and cause to be stamped and branded, as required by law, a large number, to wit, two certain packages, of distilled spirits, containing more than twenty gallons each, before removing the same from the warehouse where the same was stored and deposited, and before selling and disposing of same, and did sell, dispose of, and remove from said warehouse the said spirits before the tax had been paid thereon or the said packages had been properly branded and stamped, and the said John W. Coffey then and there owned and was interested in the said 22 barrels and two pieces of barrels of distilled spirits, contrary to the form of the statute in such case made and provided.

GEO. M. THOMAS,
U. S. Att'y.

22 And on another day of said term of said court, to wit, on Saturday, October 8th, 1881, came the district attorney; came also the claimant, by Sam. McKee, his attorney.

The claimant, by his attorney, filed his demurrer to the amended information herein.

Order Fil'g Dem'r of Claimant.

The matters of law arising upon said demurrer having been argued by counsel, and the court being fully advised thereof, it seems to the court the law is for the United States. It is, therefore, considered by the court that said demurrer be; and the same is hereby, overruled.

Thereupon the claimant, by said attorney, moves the court to compell plaintiff to sever the two causes set out as offenses in the third count of information, as they are separate offenses and sepa-

rate penalties provided by law for each, and, the court being fully advised thereof, it is ordered that said motion be, and the same is hereby, overruled.

Thereupon the claimant filed his answer to the amended information herein.

The demurrer above referred to is as follows:

Demurrer.

Circuit Court of the United States, 6th Circuit & Kentucky District.

UNITED STATES *vs.* ONE COPPER STILL, &c.

23 And now comes John W. Coffey, claimant herein, and demurs to the second paragraph in plaintiff's amended libel herein and says the facts set up therein present no cause of forfeiture for either the distillery or distilled spirits named in said libel, and are insufficient in law.

SAM'L McKEE,
Att'y for John W. Coffey.

And claimant, John W. Coffee, demurs to the 3rd count, also in the libel, and says it is insufficient in law and not authorized, because a specific penalty other than forfeiture is provided for the act therein charged, to wit, in section 3296, Revised Statutes U. S.

SAM'L McKEE, *Att'y.*

And said claimant comes and demurs also to the 1st count in the amended libel, and says it is insufficient in law and fact.

SAM'L McKEE, *Att'y.*

The answer to the amended information is as follows:

Answer.

Circuit Court of the United States, 6th Circuit & Kentucky District.

THE UNITED STATES *vs.* 1 COPPER STILL, &c.

And now comes the claimant, John W. Coffee, and for answer to the first count in the amended libel herein, and says
24 it is, not true on the day and year aforesaid, as set out in said information and libel, that he was engaged in carrying on the business of a distiller, and that he, the said John W. Coffey, did then and there defraud the United States of the tax on part of the spirits distilled by him, and that the said distillery and distillery apparatus were then and there used by him, and that the said 22 barrels and two pieces of barrels of apple brandy, to wit, distilled spirits, were found on the distillery premises of the said John W. Coffee, distiller as aforesaid, and he denies the same, and prays as in his original answer & claim herein.

SAM'L McKEE,
Att'y for Coffee.

And, for answer to the 2nd count in the information herein, the claimant, John W. Coffey, says it is not true that the 2 pieces and 22 barrels of brandy, distilled spirits, were on the day and year aforesaid found in his possession, custody, and control for the purpose of being removed and sold by him in fraud of the internal revenue laws and with design of avoiding the payment of said tax, and he denies the same.

SAM'L McKEE,
Att'y for Coffee.

25 And now comes John W. Coffey, the claimant herein, and denies that on the day and year aforesaid, the same set out in the libel herein, and at the district aforesaid, he was an authorized distiller, or a distiller at all, and an authorized wholesale liquor dealer, and that he did then and there knowingly and wilfully omit, neglect, and refuse to do and cause to be done certain things of him required by law in the carrying on and conducting of his said business, to wit, did knowingly and wilfully omit, neglect, and refuse to stamp and brand and cause to be stamped and branded as required by law a large number, to wit, two certain packages of distilled spirits, containing more than twenty gallons each, before removing the same from the warehouse where the same was stored and deposited, and before selling and disposing of the same, and did sell, dispose of, and remove from said warehouse the said spirits before the tax had been paid thereon or the said packages had been properly branded and stamped, and he prays as in his original answer.

SAM'L McKEE, *Att'y.*

The first, second, and third paragraphs in answer to the 3 counts in the amended libel sworn to before me by John W. Coffey, this October 8th, 1881.

26 JOHN W. COFFEY.

Sworn to before me by Jno. W. Coffey this 10th day of October, 1881.

SAM'L B. CRAIL,
U. S. Com'r.

Order, &c.

And on another day of said term of said court, to wit, on Monday, October 10th, 1881, came the district attorney; came also the claimant, John W. Coffee, by Sam. McKee, his attorney.

Thereupon came a jury, to wit, John W. Roberts, E. Y. Hilgore, E. G. Hall, W. H. Byers, J. B. Dean, Geo. W. Reynolds, A. C. Lewis, S. E. Kinkead, R. W. Compton, Thomas Morris, J. H. Haynes, and H. A. Linebaugh, who were elected, tried, and sworn to well and truly try the issue joined.

The jury heard the evidence and retired to consider of their verdict, and returned into court and reported that they had not agreed and were unable to agree upon a verdict; and each party agreeing that it was unnecessary to detain them—

It is ordered that the jury be, and they are hereby, discharged.

It is ordered that this case be continued to the next term of this court.

And on another day of said term of said court, to wit, on Tuesday, October 18th, 1881, came the claimant, John W. Coffey,
27 by Sam'l McKee, his attorney, and filed his amended answer herein.

The amended answer above referred to is as follows, to wit:

Amended Answer.

Circuit Court of the United States, 6th Circuit and Kentucky District.

THE UNITED STATES *vs.* ONE COPPER STILL, &c.

The claimant, John W. Coffey, amends his answer herein to the information and amendments thereto, and states that the custody, possession, and control of the articles or objects on which a tax was by law imposed, and complained of in the information of plaintiffs and found in his possession, to wit, twenty-two barrels (22) and two pieces of barrels of brandy, distilled spirits, & charged to have been in his possession for the purpose of selling the same in fraud of the internal revenue laws, and with design to avoid the payment of the taxes thereon, or sold or removed by him in fraud of the internal revenue laws, and the various assignments of breaches and
28 violations of law now considered, are the same goods and wares and objects, or commodities and distilled spirits, named and set out in an information filed against him, the said John W. Coffey, at the February term of this court, 1881, and prior to the filing of the information herein. That all of the said twenty-two barrels and two pieces of barrels of brandy, distilled spirits, found in his custody, control, and possession are the same found in his control and possession prior to the information filed against him at the February term, 1881, of this court, and that all the acts complained of in plaintiff's information herein might have been established, if said allegations be true, under the said information, either upon the counts in said information based upon sections 3450 or 3452 or 3257. That all the evidence which would be necessary to establish, and competent under the various assignments of breaches and of intended frauds in plaintiff's information herein, would be competent under and would tend to establish the allegations of said information at said February term, 1881. That the various assignments [of] frauds and attempts or intents to defraud the
29 United States of the tax imposed upon said distilled spirits, to wit, the 22 barrels and two pieces of barrels of apple brandy, relate to the same subject-matter and are based upon the same transaction as the various allegations in said information at the February term, 1881, contained, so far as they relate to offenses under section- 3452, 3453, & 3257, or either of them, and that at the time when the said information at the February term, 1881, was drawn, considered, and presented by the attorney for the United

States all the facts which would be competent to sustain the allegations of plaintiff's information herein were known to and within the possession of the representations of the United States.

And the claimant, John W. Coffey, says that the United States ought not to maintain this action for the penalty, punishment, and forfeiture, or either of them, claimed in sections 3450, 3453, 3457, or 3257, for, at the February term, 1881, an information was found, as recited above, in the district of Kentucky, at Louisville, and in this court, against this claimant, John W. Coffey, the claimant named herein, the counts of said information alleging that he had in his possession a large quantity of distilled spirits upon which a tax was by law imposed, and had not then been paid, with intent to defraud, or for the purpose of defrauding, the United States of the tax thereon, and with design to avoid the payment of the tax thereon on a part of said spirits, or on the spirits so in his possession. That at said term of said court the defendant plead guilty to the charges and counts in said information, and was adjudged and sentenced to pay a fine of five hundred dollars ($500), which judgment was the full penalty and punishment for the violations of law imposed on him for the alleged offenses charged in said information, which were the same violations and charges, offenses, and allegations of fraud, design to avoid the payment of the taxes due and imposed on said spirits, and allegations of intent to sell the same in fraud of the internal revenue laws of the United States, and he pleads and relies on the facts herein set forth as a bar to plaintiff's claim herein, and asks the same to be dismissed, with all proper relief, &c.

JOHN W. COFFEY.

STATE OF KENTUCKY, *County of Jefferson:*

Sworn to before me by John W. Coffey this October 12th, 1881.

SAMUEL McKEE,
Notary Public, Jeff. Co., Ky.

Order.

And at another term of our said court held for February term, 1882, to wit, on Saturday, February 25th, 1882, came the district attorney; came also the claimant, John W. Coffey, by Sam. McKee, his attorney.

Thereupon came a jury, to wit, Sam'l L. McAdams, A. J. York, James Deally, Jno. W. Day, Isaac Young, W. B. Skaggs, E. H. Read, S. A. Young, J. P. Miller, John W. Shirley, H. D. Gilmore, and E. Smith, who were elected, tried, and sworn to well and truly try the issue joined.

The jury heard the evidence and retired to consider of their verdict, and returned into court the following verdict, to wit:

Verdict.

"We, the jury, find for the plaintiff.

JAS. DEALLY, *Foreman.*"

Thereupon the claimant, by his attorney, moves the court for a judgment on the face of the papers, notwithstanding the verdict of the jury herein.

The court not being advised takes time.

And on another day of said term of said court, to wit; on Tuesday, March 21st, 1881, came the claimant, by Sam. McKee, his attorney, and moves the court to set aside the verdict of the jury, and in arrest of judgment, upon written grounds, which are filed.

32 The grounds above referred to are as follows:

Grounds.

Circuit Court of the United States, 6th Circuit and District of Kentucky.

UNITED STATES

vs.

22 BARRELS & 2 PIECES OF BARRELS OF DISTILLED SPIRITS.

Defendant and claimant, John W. Coffey, moves to set aside the verdict & arrest the judgment herein, because—

1. The verdict is not authorized by law and the facts in the case.

2. Because the defendant has been tried for the same offense herein charged in a former proceeding, a criminal information, & this court has no jurisdiction in forfeitures.

3. That the information itself is insufficient in law to sustain an action.

SAML. McKEE,
Att'y for Claimant.

Judgment.

And on another day of said term of said court, to wit, on Thursday, June 8th, 1882.

The court being now fully advised of the motion of the claimant for judgment on the pleadings, notwithstanding the verdict of the jury herein, and to set aside the verdict and arrest the judgment herein: It is, therefore, considered by the court that said

33 motion be and the same is hereby overruled. It is further considered by the court that the claimant, John W. Coffey, has not supported his claim to any of the attached effects herein. It is further considered by the court that the United States recover of the said John W. Coffey their costs in and about their defense against said claim herein expended.

It is further considered by the court that the attached effects herein, viz., copper still and other distilling apparatus, 1 distillery, with all appurtenances, consisting of boiler, engine, copper doubler, complete, with 65 tubs, also 22 barrels and 2 pieces of barrels of

apple brandy, be, and the same are hereby, condemned as forfeited to the United States, for the reasons and causes in the information and amended information specified.

That the marshal sell the said 22 barrels and 2 pieces of barrels of apple brandy same Monday, being the first day of the circuit or county courts, at the court-house door, in the town of Monticello, Wayne county, Kentucky, at public auction, for cash in hand, to the highest and best bidder, after having advertised the time, place, and terms of sale at least ten days before day of sale, by printed handbills posted up at the court-house door, post office, and five other places in Monticello, Wayne county, Kentucky.

34 That a *venditioni exponas* do issue, and that the marshal do sell, make report thereof, and pay the proceeds of sale to the clerk of this court, subject to the advisement and further order of court.

On motion of the district attorney it is ordered that John W Coffey, Elijah A. Haynes, & James M. Nelson do, on or before the 8th day of Sept., 1882, pay into court the sum of three hundred dollars, acknowledged by them to be due the United States by their bond herein, or then appear here & show cause to the contrary.

To all of which claimant, by his attorney, excepts.

DISTRICT OF KENTUCKY, *ss:*

I, Samuel B. Crail, clerk of the circuit court of the United States for the District of Kentucky, do hereby certify that the foregoing 34 pages, this included, contains a true and complete transcript of the record of the case mentioned in the caption.

Witness my hand and seal of said circuit court this 23rd day of August, 1882.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

SAM'L B. CRAIL, *Clerk.*
By HENRY F. CASSIN, *D. C.*

35 UNITED STATES OF AMERICA, *District of Kentucky,* } *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the Kentucky district, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America, plaintiffs, [and] 1 copper still, &c., John W. Coffey, claimant, defendant, a manifest error hath happened, to the great damage of the said John W. Coffey, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the

United States, together with this writ, so that you have the same at the city of Washington on the first day of our next October term, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said Court, at Louisville, in said district, this fourteenth day of August, A. D. 1882, and of the Independence of the United States the one hundredth & seven.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

SAM'L B. CRAIL,
C. C. C., K. D.

Allowed by—
JNO. W. BARR.

36 UNITED STATES OF AMERICA, }
District of Kentucky, } *ss:*

To George M. Thomas, attorney of the United States for the district of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at city of Washington on the 9th day of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the said district of Kentucky, wherein John W. Coffey, claimant of one copper still and other articles, is plaintiff, and the United States of America *are* defendants, in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of August, in the year of our Lord 1882, and of our Independence the 107th.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

JNO. W. BARR, *Judge.*

37 I hereby accept service of the within.
Sept. 11th, 1882.

GEO. M. THOMAS,
U. S. Attorney.

38 Know all men by these presents that we, John W. Coffey, principal, and Samuel McKee and T. T. Alexander, sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred dollars, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 14th day of August, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a term of the circuit court of the United States for the district of Kentucky, at Louisville, in a suit pending in said court between the United States of America, plaintiffs, and John W. Coffey, claimant of one copper still & other articles, judgment was rendered against the said John W. Coffey; and the said John W. Coffey having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such that if the said John W. Coffey shall prosecute his writ of error to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

SAMUEL McKEE. [SEAL.]
T. T. ALEXANDER. [SEAL.]

Sealed and delivered in presence of—
SAM'L B. CRAIL.

Approved by—
JNO. W. BARR, *Judge.*

39 Supreme Court of the United States. In error of October term in the year of our Lord one thousand eight hundred eighty-two.

ONE COPPER STILL, &c., JOHN W. COFFEY, Claimant,
against
THE UNITED STATES.

Afterwards, to wit, on the 2d Monday in October in the same term, before the justices of the Supreme Court of the United States at the Capitol in the city of Washington, comes the same John W. Coffey, claimant and party proceeded against, by his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the information and amended information aforesaid in said suit of the United States against the said distillery, &c., and the matters therein contained are not sufficient in law for the
40 said United States to have or maintain the aforesaid action thereof against the said one Copper Still, &c., and 22 barrels & 2 pieces of distilled spirits, the property of the claimant, John W. Coffey, herein.

There is also error in this, to wit, that, by the record aforesaid, it appears that judgment was given for the said United States against John W. Coffey, claimant, whereas by the law of the land the said judgment ought to have been given for the said John W. Coffey against the United States; and the said John W. Coffey prays that

the judgement aforesaid may be reversed, annulled, and altogether held for nothing, & that he may be restored to all things which he hath lost by occasion of said judgment, &c.

G. C. WHEATON,
SAM'L McKEE, &
T. T. ALEXANDER,
Atty's for Plaintiff in Error.

Endorsed on cover: Kentucky C. C. U. S. No. 92. John W. Coffey, claimant of one copper still and other articles, plaintiff in error, *vs.* The United States. Filed 11th October, 1882.

117-233

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 92.

JOHN W. COFFEY, CLAIMANT, ETC., PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF KENTUCKY.

PETITION OF PLAINTIFF IN ERROR FOR REHEARING.

The claimant, John W. Coffey, respectfully presents his petition for a rehearing herein, and asks that the same be filed and considered by the Court.

The opinion and order affirming the judgment of the Court below appear to be based wholly on questions of practice. If I correctly understand the mind of the Court in this case, and that of A. G. Coffey vs. The United States, decided at same time, and argued mainly on same questions, this Court, had a demurrer been interposed to the amended answer, would have held said amended answer a bar to the action. Is the practice for forfeitures under the internal revenue laws regulated by the admiralty rules or by section 914, Revised Statutes of the United States?

Section 914 of the Revised Statutes of the United States reads:

"The practice, pleadings, forms, and modes of proceeding in civil "causes, other than equity and admiralty causes, in the Circuit and "District Courts, *shall conform*, as near as may be, to the practice, "pleading, forms, and modes of proceeding existing at the time in like "causes in the Courts of record in the State within which Circuit and "District Courts are held, any *rule of Court* to the contrary notwithstanding." (Italics mine.)

Is this a suit at common law? In 8 Wall., page 541, Morris, Cotton, the Court says:

"When the seizure was made on land, the suit, though in the form "of a libel of information, *is an action at common law.*"

In 6 Wall., Armstrong Foundry: "The proceedings below related to a seizure on land; and, though conducted under the statute in the forms of admiralty, must be regarded as a case of *common law jurisdiction.*"

The confiscation act, under which the two cases were prosecuted, specially directed the prosecutions *after the admiralty forms.* They were before the practice act passed, as in section 914, R. S. (1872), which, since its date, must regulate all common law proceedings; and rule 51, Admiralty Rules, can not interfere with nor abrogate a statute. A common law action, or proceeding for a forfeiture under a seizure, may be *kindred* to an admiralty *proceeding in rem*, so far as the information is concerned, but rule 51, Admiralty, can not prevail against section 914.

Only two classes of cases are excepted by the statutes—equity and admiralty—not cases *kindred to suits in admiralty*. Rules of Court may have been proper before the act of 1872, but since that date any form of proceedings, which deny the right of defendant to have the issues formed as the State statutes declare they should be, is a denial of a right given by a positive and unequivocal law.

In the Sarah, 8 Wheat, 394, the Court holds:

"In the trial of all cases of seizure on land, the Court sits as "a Court of common law. Although the two jurisdictions (admiralty "and common law), are vested in the same tribunal, they are as dis- "tinct from each other as if they were vested in different tribunals, "and can no more be blended than a Court of Chancery with a Court "of common law."

Section 3213, Revised Statutes, provides:

"That suits under the internal revenue laws for fines, penalties, "and forfeitures, not otherwise provided for, shall be brought in the "name of the United States, in any proper form of action, or by any "appropriate form of proceeding."

This section does not say the proceedings therein shall follow the admiralty proceedings, nor that they shall be *kindred* thereto. Neither is there in the statutes anywhere a section where it is otherwise provided as to how such pleadings and proceedings shall be, except by section 914, Revised Statutes, and this section declares what forms of pleading shall be followed.

Section 126, Kentucky Civil Code, reads: "Every material allegation of a pleading must, for the purpose of the action, be taken as true, unless specifically traversed."

Section 386, Kentucky Civil Code: "Judgment shall be given for the party whom the pleadings entitle thereto, though there may have been a judgment against him."

This is not an admiralty case. It is an action at common law. It is not tried as an admiralty case, but as a common law action. It is nowhere, by any act of Congress, required to be conducted as an admiralty cause. Any rule of Court so directing or making the pleadings conform to the admiralty practice would directly conflict with the practice act, and must give way to that act. Rule 51, Admiralty, was promulgated December, 1854. The practice act was adopted June 1, 1872. There was no issue on plea of former conviction, and claimant was entitled to a judgment on the pleadings. He moved for it. His motion was denied, and his exception properly entered. It needed no bill of exceptions to bring up for review this action of the Court.

Nothing is complained of other than the action of the Court on the pleadings. No bill of exceptions is needed to revise them.

In 8 Wallace, 357, Young vs. Martin, this Court says:

"Had the demurrer been in the transcript, and had it appeared that the plaintiff relied on its sufficiency, and final judgment thereon had passed against him, the error of the Court, if any existed, would have been open to examination, for it would have been disclosed by the proceedings. *No bill of exceptions* could have then presented more clearly the ruling of this Court."

So here the motion *non obstante veridicto* raises only the question as to who shall have judgment on the pleadings, and no "bill of exceptions" could present more clearly the ruling of the Court.

In 95, U. S., page 125: "The judgment of the Court is subject to review independently of any bill of exceptions, the only office of which is to bring upon the record rulings that without it would not appear."

In 6 Cranch, page 223, Chief-Justice Marshall: "There can be no doubt that anything appearing upon the record, which would have been fatal upon a motion in arrest of judgment, is equally fatal upon a writ of error."

In 4 Howard, 143: "There can be no doubt that exceptions to the opinions given by the Courts below must be taken at the time

the opinions are pronounced. But it is equally clear that when the whole record is before the Court above, as in this case (and the whole record is here in the case now at bar), any exception appearing on it can be taken by counsel which could have been taken below (16 Pet., 319). So, it is the duty of the Court to give judgment on the whole record, and not merely on points stated by counsel."

In 20 How., Suydam vs. Williamson, et al, 433: "The operation of the writ of error addresses itself to the record as an entirety, and not to any separate portion of it as distinct from the residue, and when the cause is removed into the Appellate Court, any error apparent in any part of the record is within the revisory power of such tribunal. The rule is, that whenever the error is apparent on the record, it is open to revision, whether it be made to appear by bill of exceptions, or in any other manner."

The Record, page 15, shows: "Thereupon claimant, by his attorney, moves the Court for a judgment on the face of the papers, notwithstanding the verdict of the jury herein." Also, to set aside and arrest the judgment on written grounds and grounds set out. And on same page and page 16, R., the judgment of the Court overruling all these motions, and an exception, as follows:

"To all of which claimant, by his attorney, excepts." And this is the usual and only way of taking exceptions to rulings, made by the Court, on motions which involve the pleadings only. No bill of exceptions could more plainly present the rulings of the Court on claimant's motions. It is, therefore, most respectfully, but earnestly, insisted that the opinion of January 18, 1886, in this case, does not conform to the authorities and the law heretofore delivered by this Court, and is contrary to the Statutes regulating pleadings and practice, as defined in section 914, *supra*, and that a different judgment than that indicated in the opinion should be entered.

Respectfully submitted,

SAMUEL McKEE,
Attorney for Plaintiff in Error.

117-233

Supreme Court of United States.

OCTOBER TERM, 1882.

ONE COPPER STILL, &c.,
JOHN W. COFFEY, Claimant. - Pl'ff in Error.

VERSUS | No. 596

THE UNITED STATES. - - - - - Defendant.

Error from the Circuit Court for the District of Kentucky.

Brief for Plaintiff in Error, by SAMUEL McKEE.

SAMUEL McKEE,
T. T. ALEXANDER,
G. C. WHARTON,
Attorneys for Plaintiff in Error.

Supreme Court of United States.

OCTOBER TERM, 1882.

JOHN W. COFFEY, CLAIMANT, AND
ONE COPPER STILL, ... *Plff in Error,*

VERSUS } No. 1040.

THE UNITED STATES, ... *Defendant.*

Error from the Circuit Court for the District of Kentucky.

STATEMENT OF CASE.

In the Circuit Court of the United States for Kentucky District an information was filed by the United States against one copper still, engine, boiler, the distilling apparatus of John W. Coffey, and twenty-two barrels, and two pieces of barrels of distilled spirits; alleging seizure of the above-named articles at Monticello, Wayne County, in said district; and that they were the property of John W. Coffey. Alleging that said Coffey was an authorized distiller, and in carrying on the business of a distiller changed and altered certain marks, stamps, and brands, on certain casks and packages containing distilled spirits; and put into certain casks, etc., spirits of greater strength than that indicated by the inspection marks thereon, for the purpose of selling other spirits of different quality and quantity from that previously inspected therein; and thereby attempted to defraud the United States of the tax on the spirits distilled by him.

This was the original information.

Afterwards an amended information was filed in three counts, charging:

1. "That John W. Coffey was engaged in carrying on the business of a distiller, and did defraud the United States of the tax on a part of the spirits distilled by him; and that the property named was found in his possession."

2. "That the twenty-two barrels and two pieces of barrels distilled spirits were subject to a tax imposed by law, and which tax had not been paid, and were found in his possession, for the purpose of being removed and sold by him in fraud of the Internal Revenue Laws, and with design to evade the payment of the tax."

3. "That John W. Coffey was an authorized distiller, and did knowingly and willfully omit to do certain things required by law to be done, and refused to do the same, in carrying on and conducting the business of a distiller; that is, omitted to stamp and brand certain packages of distilled spirits before removing same from his distillery warehouse, and before selling same; and did dispose of and remove same before the tax had been paid and said spirits had been stamped and branded properly; and that the said spirits were owned by him; and for these causes alleged said articles were forfeited to the United States."

To this Coffey filed claim and answer. It was conceded in the court below that there was nothing set out in the original information to authorize a forfeiture of the property and so held by the court, and the district attorney was allowed to amend the information. A demurrer was filed to this by Coffey and to each paragraph, and by the court overruled.

Answer was then filed making an issue, and after a trial and hung jury Coffey filed an amended answer as a plea in bar, in which he set up that all the facts charged against him were set up in a former suit in the same court in a criminal case against him at a preceding term which charged precisely all the same offences and the same acts herein alleged and charged, and that a judgment was had against him in said

criminal case and a fine of $500 adjudged against him for the very same offenses charged against him in this action.

This case went to trial before a jury on the pleadings as thus stated. No reply was made to this plea in bar, and no demurrer filed to the same. The jury found for the United States, and Coffey then moved an arrest of judgment; that the verdict be set aside, and a judgment rendered for him, notwithstanding the verdict of the jury, all of which the court overruled and ordered a forfeiture of *the property libeled*. And it is to reverse this action of the court, which brings up every question of law made in this case, that the errors have been assigned and the case brought here.

The questions raised by the errors assigned, and which were argued in the court below, may be stated in these propositions, to wit:

1. *That the circuit court had no jurisdiction.*
2. *The information is insufficient in law.*
3. *That this action is barred by a former proceeding against Coffey and judgment rendered for the same offense.*

First then, as to the

QUESTION OF JURISDICTION.

Had the circuit court jurisdiction of this case? Section 563, Revised Statutes, U. S., prescribes the jurisdiction of the district courts. Subsections 3 and 8 read:

SUBSEC. 3. "Of all suits for penalties and forfeitures "incurred under any law of the United States."

SUBSEC. 8. "Of all causes of admiralty and maratime "jurisdiction, saving to suitors in all cases the right of a "common-law remedy where the common law is competent "to give it; and of all seizures on land and water not with- "in the admiralty and maratime jurisdiction. And such "jurisdiction shall be exclusive, except in the particular "cases where jurisdiction of the causes and seizures is given "to the circuit courts."

This, viz., the two sections, clearly makes the jurisdiction in all cases of seizures *exclusive* in the district court, unless when in special cases it has been given to the circuit court in other certain causes.

Consolidate the two subsections and read them as applying solely to the class of cases of the one now at bar, and we have it read thus:

"Of all suits for penalties and forfeitures incurred under "laws of the United States, and of all seizures on land and "water not within the admiralty and maritime jurisdiction; "and of such cases this jurisdiction *shall be exclusive*, except "in particular cases where jurisdiction is given to the cir- "cuit courts."

Now let us see in what particular cases the law has given jurisdiction to the circuit courts to take them out of the exclusive clause.

Subsection 4 of section 629, Jurisdiction of Circuit Courts, reads:

"Of all suits at common law or in equity arising under "any act providing for revenue from imports or tonnage, "except civil causes of admiralty and maritime jurisdiction, "and seizures on land or on waters not within the admiralty "and maritime jurisdiction, and except suits for penalties and "forfeitures; of all causes arising under any law providing "internal revenue, and of all causes under the postal laws."

The manner of the punctuation would indicate the jurisdiction to include "all causes arising under *any law providing internal revenue.*"

The subsection clearly excepts all classes of admiralty and maritime causes; it excepts all seizures on land or on waters not within the admiralty and maritime jurisdiction; and it *excepts "all suits for penalties and forfeitures."* These exceptions are clearly inconsistent with and directly opposed to the last clause, or rather to the construction of the last clause, so as to give jurisdiction in all *internal revenue* causes; and the only possible mode of reconciling the clauses, so as

to have them preserve any meaning, is to construe this last clause as intending to give the circuit court jurisdiction to enforce simple suits for the *collection of internal-revenue taxes* when parties fail to pay the taxes for which they are liable when the same have been assessed against them. This relieves it of all embarrassment, and leaves the enforcement of *penalties and forfeitures exclusively with the district courts*, as provided in the jurisdiction of these courts. Any other construction puts not only the clauses in this fourth subsection in direct antagonism, but also antagonizes this with subsections 3 and 8 of Section 563, "Jurisdiction of District Courts."

The only objection to this view being final and conclusive as to the jurisdiction in these cases being alone in the district court is the last clause in section 3454, under which this case is also sought to be maintained.

Can that give jurisdiction against the sections cited? Practice and custom must go very far in governing in the absence of direct judicial construction. The practice in all the circuits has invariably been to bring all suits of this character in the district court. We so find it in all the reported cases. In Massachusetts, New York, Pennsylvania, Ohio, Illinois, Missouri, California, and Louisiana, and even in all the reported cases in any of the U. S. Court Reports, so far as collected, from Kentucky. In all the cases of seizures that have gone up to the United States Supreme Court we find they originated in the district courts:

11 Wallace; The Distilled Spirits, 356.
11 Wallace; The Cherokee Tobacco, 616.
11 Wallace; Thatcher's Distilled Spirits, 679.
102 U. S.; U. S. v. Choteau & Co., 602.

And in all the cases reported in Blatchford's Reports without one exception as far as we can find.

This is so universal a practice that it should not be without weight; and a very powerful reason why it should be so is that it gives the party proceeded against the right to have

his matter reviewed by the circuit court. Whereas, if he is carried to the circuit court at the start, in all cases involving small values an appeal to the Supreme Court would be more costly than the value of his property; and he can recover no costs.

SECOND, SUFFICIENCY OF THE INFORMATION.

We next proceed to the Question of the Sufficiency of the Information.

This is a civil proceeding; that is, it comes under this class of actions. In all civil actions the pleadings, unless controlled by statute, must conform as near as may be to the practice as regulated by the Kentucky Code, or the common law, subject to the rules of the Supreme Court; and we find that these rules as to the conformation of a libel of information in cases of seizure render necessary such allegations as would sustain and make good what, in Kentucky practice, is called a petition in a civil suit. There are in this information, the original and amended one, four (4) *counts*. They must be treated as *separate paragraphs* in the same manner as pleadings are treated in civil causes. Each paragraph or *count* must be a good count in itself. It can not be joined to or mingled with another to sustain the action, but must stand alone. If alone any one count is insufficient to show a cause of action or forfeiture, then that one count must go out. If they are *all bad*, when separately considered, then all must go, and the whole information fail.

It was conceded in the court below that the original information, which was drawn under section 3326, Revised Statutes, contained in itself nothing to authorize a forfeiture. The statute simply directs fine and imprisonment. This then is wholly bad. Let us examine the amended information.

The third count is plainly bad. It is a direct charge of an offense against claimant, John W. Coffey, and under the language of the section in which it is drawn, 3456 Revised Statutes, no prosecution can be had thereunder, if for the

offense charged a specific penalty or punishment is imposed by any other section of the law.

It is also a *specific penalty against the person.* In this case the distiller, and unless it is such, and Coffey is under it directly proceeded against, this count must fail.

It is not needed for your Honors to recite the several sections of the law under which specific penalties are provided, for all this third count charges John W. Coffey failed and omitted to do. It is enough to say that the charge in this count of the information simply, when consolidated, is, "that Coffey omitted to properly brand and stamp certain packages before removing and selling same; and removed and sold the same before the tax was paid," in fact it is simply a removal of spirits before the tax was paid.

It is clearly covered by sections 3289, 3450, 3323, 3281, 3256, 3257, 3296, 3452, any of which sections may be made to cover that offense against John W. Coffey which is set up by this count.

That is, each of these sections provides a specific punishment or penalty against the claimant for the very acts and omissions charged in this third count. The court below held the proceeding could not stand under this count, and this court has so held in 95 United States, p. 571; United States v. 200 barrels distilled spirits.

Now let us examine counts Nos. 1 and 2 in the amended information.

First, neither of them avers a *seizure* by any officer or other person. They give no place where the twenty-two barrels and two pieces of barrels were found; whether on land or on water, nor in what district. Neither of the counts describe how John W. Coffey was violating or how he was attempting to violate the law, or in any way describe the offense in such manner that Coffey could know from this, with what he is charged or on what grounds his spirits are sought to be forfeited.

The rule of the Supreme Court—rule 22—reads:

"All informations and libels of information upon seizures "for any breach of the *revenue*, or navigation, or *other laws* of "the United States shall state the place of seizure, whether "it be on the land, or on the high seas, or on navigable "waters within the admiralty and maritime jurisdiction of "the United States, and the district in which the property is "brought and where it then is. The information or libel of "information should also *propound in distinct articles the 'mat-"ters' relied on as grounds or causes of forfeiture*, and aver the "same to be contrary to the form of the statute or statutes "of the United States in such case provided, as the case may "require; and *shall conclude with a prayer* of due process to "enforce the forfeiture and to give notice to all parties "concerned in interest to appear and show cause at the "return day of process why the forfeiture should not be "decreed."

In mere form no great nicety is required; but in *regard* to matters of substance the Supreme Court in the case of the "*Schooner Hoppett*" *and cargo*, 7 Cranch, 389, held:

"*That every fact and circumstance material* in law to the "maintenance of the suit must be set forth with precision, "clearness, and all reasonable certainty.

"The owner of the property proceeded against is entitled "to know exactly to what he is called upon to answer; and "the case must be so presented as to *enable the court to see ju-"dicially that the fact alleged* to have been committed is an of-"fense against the laws."

"A rule so essential to justice and fair proceedings as "that which requires *a substantial statement of the offense* upon "which the prosecution is founded must be the rule of every "court where justice is the object."—*Ibid.*

"The allegation that the act charged was committed in "violation of law, or the provisions of a particular statute, "*will not justify* condemnation unless independent of this al-"legation *a case be stated which shows that the law has been vio-"lated.*"—*Ibid.*

Every count in the amended information fails to meet the requisites of this decision.

Then there is nowhere in either count of the amended information a prayer for judgment of forfeiture, or condemnation of the articles seized, or for any orders or judgments against them in any manner.

Applying the language of the court above to the first count, "there is not a case stated nor a substantial statement of the offense," and it comes very far short of "*a statement of every fact and circumstance material in law to the maintenance of the suit.*"

It simply says that "John W. Coffey did defraud and attempt to defraud the United States of the tax or part of "the tax on the spirits distilled by him," *but gives no fact* whatever, not even a circumstance, to indicate how he did this.

The second count is no better. It gives not a single circumstance to show how or in what manner he proposed to remove the spirits in fraud of the law, nor does it state a single circumstance which could aid the court from the statement, if no proof was offered to decide whether Coffey had committed or intended to commit an offense. And this is the *test.*

On neither of the allegations in either of these counts could the court decide whether Coffey had violated any law at all, or done a single thing to warrant condemnation of his property.

If, then, no facts are set forth to indicate to the court that these facts or acts done—that is, that Coffey has actually done some act to warrant a forfeiture under the statute, or some statute—the counts are bad and the information must fail.

A plaintiff sues for a debt and simply alleges that B owes him two thousand dollars which he has failed to pay, but gives no facts to show how he owes; again, A alleges that B has defrauded him out of an estate, but gives no facts or statements as to how he has done so—these are simply

allegations, and utterly worthless unless facts or some one fact or act is stated describing the indebtedness or fraud; and the rule is the same in all seizure cases, as already cited.

See also in support of this, 4 Bissell 27–28, U. S. v. Distillery. It is there held, "That an information should be as certain as a declaration at common law."

Also, 2 Bond, 78, U. S. v. 78 Cases of Books, says, "The offense must be specifically defined, that the claimant may know with certainty what are the grounds on which the forfeiture is claimed."

In 95 U. S. 586, this court says: "In general, says Chief Justice Marshall, it is sufficient in a libel of information to charge the offense in the very words of the statute which directs the forfeiture, but the proposition we think is not universally true. . . . Known principles of the law require greater particularity to be observed in order that all the ingredients which constitute a violation of the statutory offense may be accurately and clearly alleged;" and in support of this cites 2 Colby Cr. Law, 114; Steele v. Smith, 1 Barn. and Ald. 95; Conk. Treatise, 5th ed. 548.

There is no such description of the offense in either count to show that if the allegations be true this case must be within the law.

In no sense do either of the counts in the amended information come up to these decisions or to the rule "that it is sufficient in a libel or information on a seizure to describe the offense in the words of the statute, provided it be so described, that if the allegation be true the case must be within the law."

There is not in either count an allegation of a single ingredient, or a single act done, which of itself could possibly indicate to the court in what manner an offense has been committed.

Again, neither of these by themselves contain a single allegation that will bring them within the rules laid down for the structure of an information, and neither of them

standing alone are good under the rule as held by this court; nor are they good as separate paragraphs in a petition under the Kentucky Code and Decisions, nor as counts in a declaration at common law.

It was contended in the court below that the amended information must be read as a part of the original, and between the allegations of seizure and prayer for condemnation, so as to make a complete libel, which seems to us contrary to all rules of practice and decisions. But let us so read it, and we find it thus:

The original information as amended by this first count, then, alleges that Coffey "changed the stamps and marks on "certain casks, and put spirits into casks of a different kind "from that marked and branded, etc., *and did then and there* "*defraud and attempt to defraud the United States of the tax on* "*part of the spirits distilled by him.*"

Thus amended, the count charges nothing whatever other than is charged in the original, and in the same words and in the very words of the original, and limits the fraud to the changing of stamps, etc.

Neither the *original* nor *this paragraph* of the amended libel charge that the *tax* or *any tax was due on the spirits, nor that the tax had not been paid thereon.* This is of itself fatal.

All there is in the second count of the amended information is,

"That the said twenty-two barrels and two pieces of "barrels of distilled spirits were then and there subject to "a tax imposed by law, which said tax had not then been "paid, and were then and there found in the possession, "custody, and control of said John W. Coffey for the purpose "of being removed by him in fraud of the internal-revenue "laws and with design to avoid the payment of the said tax."

Incorporate this into the original libel, and what do we have?

"That John W. Coffey was an authorized distiller, "engaged in carrying on the business of a distiller, and

"did then and there change and alter certain marks and "brands and put into certain casks, etc., other spirits than "that indicated by the inspection marks thereon, and that "said twenty-two barrels and two pieces of barrels of dis- "tilled spirits were then and there subject to a tax imposed "by law, and which tax had not then been paid, and were "found in the possession, custody, and control of said John "W. Coffey for the purpose of being removed and sold by "him in fraud of the internal-revenue laws," etc.

Now how, with this reading, is he charged with an intent to sell and remove the spirits in fraud of the revenue laws? Simply by *changing the brands and stamps on the packages and putting into same spirits other than that indicated by the marks and brands, or other than that which was marked and branded by the revenue officers.*

There is not *alleged a single act or a single ingredient* which could constitute a statutory offense in any one or in all the counts, taken singly or read all together, which can bring either one singly, or all read as one, within the rules and decisions cited.

If he did change the stamps, brands, and marks, and put other spirits into the packages than the marks showed—and he is certainly nowhere charged to have done any thing else—for these acts a forfeiture is nowhere in the statute pronounced, but he is for this, subject to a fine and penalty. (See section 3326.)

For which he was tried and a judgment against him and pleaded in bar, and will be shown further on. Coffey was an authorized distiller, so alleged and was true.

The twenty-two barrels and two pieces *were found* in his possession. He was the proper custodian of them. They were liable to a tax. The tax had not been paid. It was not past due; all that was due had been paid. He had a year from November, 1880, in which to pay it. He had given bond for its payment. Had reported it to the collector, and it was all *gauged and stamped*, and in *his warehouse*, in the place it should have been.

This all being true, does the allegation in the information or *amended information* "allege or state any case which shows "that the law has been violated," so as to show a cause or act of forfeiture, as the Supreme Court, in 7 Cranch 389, say must be stated; or does it even set forth *any fact* or *circumstance material* in law to the maintenance of the suit which could in any manner require claimant to know with what he is charged, or what he is required to answer, other than *changing stamps*, etc.?

There is a manifest reason why the information should specify the acts committed by *an authorized distiller*, regarding spirits *found with him*, when the same are sought to be forfeited. The mere fact that spirits are found in possession of *any person not a distiller*, or wholesale dealer, on which the tax has not been paid, *prima facie* puts a burden on that party to show an innocent, or an honest holding; and he must show the same to exculpate himself. He is presumed guilty of a fraud in merely having possession of spirits on which the tax has not been paid; and the fact of possession being proved, the court without further explanation would be authorized to adjudge a forfeiture. Not so with a *person who is an authorized distiller*, and engaged in the business as such. He is the proper custodian of the spirits until the taxes are paid; and a mere allegation as to the possession by him, with an intent to defraud, setting forth in the libel *no fact to constitute an offense*, can not authorize the court to judicially know, he has any intent to defraud or has defrauded, and places no burden on him, and he has no reason to show innocence. In the absence of any *specific act* set out in an information against a distiller in itself showing a fraud or a presumption of fraud, it would be impossible for him and it could not be demanded that he prove his innocence. If no act is stated, the court can not judicially know that he has committed or designed a fraud or done any thing that would authorize condemnation; and if the information is itself defective, evidence can not cure it. In 7 Cranch, 394, this court, by Chief Justice Marshall, says:

"The accusation on which the prosecution is founded "should state the crime which is to be proved, and state such "a crime as will justify the judgment to be pronounced; and "for the reason that the court may see with judicial eyes that "the fact alleged to have been committed is an offense against "the laws."

Is there a single fact set out in the second or third count to indicate to the court of what offense claimant has been guilty? Certainly there is not. We think the information in all its counts bad in another respect. It nowhere states that the whole or any part of the spirits sought to be forfeited were made or produced at the distillery owned and operated by John W. Coffey, or were the product of his distillery.

It nowhere charges that any of the alleged frauds, or attempts at fraud, were done in or by the use of the distillery sought to be forfeited. (See 4 Bissell, 28, U. S. v. Distillery).

It is contended in this argument that section 3453 does not apply to a case of seizure of the property of an authorized distiller, and for the reason that specific penalties and forfeitures are provided by other sections of the statutes for every conceivable offense by a distiller; and that this section 3453 was intended to and does apply solely and alone to prosecutions for condemnation of property seized for violations of the internal revenue laws in the hands of others than authorized distillers, which will be shown further on, in the next proposition, as an incident to the argument thereto.

THIRD, THE PLEA IN BAR.

The proceeding in this case is a quasi-criminal proceeding, although a proceeding *in rem*. In all three counts of the amended information the fact is set out that John W. Coffey did *himself*, *in person*, defraud or have in his possession the articles named with the intent to defraud the United States of the tax on the same. *He* is made the *offender*.

A forfeiture itself involves, in all revenue laws, crime; if it did not, a crime is charged in this case. The question is one of criminal law, and is a crime by *Coffey the person.* A thing can not commit a crime; it can be forfeited; but it must be forfeited not for its own offense but the offense of the person who owns it or controls it at the time.

"Disguise the real fact as we may under whatever form "of words, if the *intent* is the *pivot* on which the forfeiture "turns, then the question is one of *criminal law*, and the for- "feiture is a *penalty* for the crime."

Bishop's Criminal Law, 834.

Again,

"Forfeitures are sometimes required by statutes, and they "rest on the same reasons as fines."

Same, Bishop's C. L. 944.

Also, Boles v. Lynes, 1 Root, 196.

A forfeiture is the very highest kind of a penalty and punishment in many cases. The word itself implies the party has committed a wrong or fault. A thing can not do this.

In this case punishment is sought to be inflicted on J. W. Coffey for an act of *his*, for "*his*" *intent to defraud*, and for *his design* to evade the payment of the taxes, for a personal wrong done by *him*, or for a wrongful *intent by him.* A *penalty* is sought to be inflicted on him by a forfeiture of his brandy. A forfeiture is a penalty. There can be no doubt as to this. Coffey himself is on trial here, and for having these goods in his possession with intent to commit a fraud. *Disguised under whatever form of words*, as said by Bishop above (page 834), the *intent on the part of Coffey* to commit a fraud is the *pivot* on which this whole case turns. And this brings it to a question, Has *he committed*, or did *he* design or intend a fraud?

This being the question, and it seems to us impossible to conclude otherwise, *the plea in bar;* (a former trial and conviction, a judgment in a former proceeding against him for the same offense), the amended answer sets out fully and clearly

that heretofore in "this court" a "criminal information" was found against him charging the *same offenses* that are here charged, that they were all then known to the officers of the United States; that the same facts needed to support this information were needed to support that; that they were all then known and are the same offenses and same facts, or frauds and designs and intents to defraud that are here set out; that on that information a judgment was taken by the United States against the defendant, who is the same party here proceeded against, for $500, and that said proceeding and judgment are a *bar* to any further proceedings herein.

This answer is not *traversed*, and the question is, Is it good in law? There is no question more clearly, repeatedly, and conclusively settled than "that a man can not be twice tried for the same offense." Coffey, if he has committed no offense, can not be punished at all. If he has done no wrong, the brandy in this case can not, under any circumstances, be forfeited. If he has been guilty of a wrong, then he says he has been proceeded against and punished for it.

The only question is, "Is it the same offense?" He says it is the same. He so avers and fully avers in his amended answer. This, we say, is not denied. The allegation must be taken as true. There is no issue on this question. The offense, then, being the same, what follows?

In the language of the court in the case of the United States against McKee, 4 Dillon, 129: "If it is the same offense (the offense charged in the criminal information) as defined by law for which he is now prosecuted, and is also for the same transactions, our laws forbid that he or any one else shall be twice punished for the same crime or misdemeanor."

Your Honor will specially observe the language—"*If the "prosecution or suit is for the same transaction*, the law forbids "any one shall be twice punished for the same crime or mis- "demeanor."

Certainly the learned gentlemen who represent the United

States would not for a moment contend that to forfeit the distilled spirits in this case would not be a punishment of John W. Coffey, and for the same transaction.

In the same case just cited, page 130, the court says: "We "are therefore of the opinion that if the specific acts of remo- "val on which this suit is brought are the same which were "proved in the indictment, the former judgment and convic- "tion is a bar to the present action."

This decision is sustained by the Supreme Court of the United States on some of the very same batch of cases, "the St. Louis whisky frauds," the cases of the United States v. Choteau, the United States v. Ulricci, 102 U. S. 602, et seq. In one of these cases a compromise was pleaded, that of Choteau. In the other, "Ulricci," a judgment on a plea of guilty to an indictment (precisely the case at bar). In the Choteau case, page 611, the court says:

"He has been punished in the amount paid upon the set- "tlement for the offense with which he was charged, and that "should end the present action, according to the principle on "which a former conviction or acquittal may be invoked to "protect against a second punishment for the same offense. "To hold otherwise would be to sacrifice a great principle to "the mere form of procedure and render settlements with "the Government delusive and useless. While there has "been no conviction or judgment in the criminal proceed- "ings against the distiller here, the compromise must, on "principle, have the same effect."

* * * * * * * * * *

"It would, therefore, be at variance with right and justice "to exact in a new form of action the same penalty. For as "it was justly said by this court in *ex-parte* Lange; speaking "through Mr. Justice Miller, 'If there is any thing settled in "'the jurisprudence of England and America, it is that no "'man can twice lawfully be punished for the same offense. "'And though there have been nice questions in the applica- "'tion of this rule in cases in which the act charged was such

"'as to come within the definition of more than one statutory "'offense or to bring the party within the jurisdiction of more "'than one court, there has never been any doubt of its en-"'tire and complete protection of the party where a second "'punishment is proposed in the same court on the same facts "'for the same statutory offense. This principle finds expres-"'sion in more than one form in the maxims of the common "'law.'"

Your Honors will observe specially the great breadth of this declaration.

What is proposed in the information other *than a punishment of John W. Coffey* for doing the same things he was proceeded against in the criminal information? It is to place the penalty on him of forfeiture of his goods for the very acts he was fined five hundred dollars for committing. It is "*a second punishment in the same court, on the same facts, for "the same statutory offense.*" The very thing this court and all courts say shall not be done.

Suppose this proceeding is allowed, where are prosecutions and proceedings to end? Coffey's brandy and distillery may be forfeited and sold. Then he and his sureties on his bond may be sued for the taxes imposed by law and unpaid, and penalties imposed for this; then again, under section 3296, fined and imprisoned; again, under 'section 3256, and still other sections of the law, and punished under every one of them by *different penalties*, and yet the acts on which all may be brought are precisely the same, and in each case he would be punished for the commission of the very same acts and precisely the same offense. And this contrary to every principle of well-settled law, oppressive beyond measure on the citizen, and leading to an absurdity which approaches the ridiculous.

Your Honors will observe that by the language of the information in this case, every one of the counts therein charges *John W. Coffey* with the specific intent to defraud the United States of the tax or part of the tax on the spirits distilled by

him and in his possession, and they (so far as their description goes) describe the manner of his, Coffey's, offense *in personam.*

The language of the *information in rem* is substantially the same as in the criminal information, and there is not a solitary substantial averment in the information *in rem* that is not also in the one *in personam.* Every charge of fact in it is against the person.

SECTION 3453, Revised Statutes, U. S., provides:

"All goods, wares and merchandise, articles and objects, "on which taxes are imposed, which shall be found in the "possession, or custody, or control of *any person* for the pur- "pose of being sold, or removed *by him*, in fraud of the inter- "nal-revenue laws, or with design to avoid the payment of "said taxes, may be seized, etc., . . . and shall be forfeited "to the United States. And all raw materials found in the "possession of *any person intending to manufacture* the same "into articles of a kind subject to taxation *for the purpose of* "*fraudulently selling* such manufactured articles or *with design* "*to avoid* the payment of said taxes, and all tools, implements, "instruments and personal property whatever in the place or "building, or within any yard or inclosure where such ar- "ticles or raw materials are found, may also be seized as "aforesaid and shall be forfeited as aforesaid."

The italics are ours, to call attention to the fact,

1. That the offense committed must be by the *person* and with an intent to defraud.

2. That there does not occur in the whole section the word "*distiller*," or "distillery;" nor any where is there the slightest reference to an offense by an *authorized distiller;* to the products of their distilleries found in their distillery, warehouses, or to such persons as *distillers* in any manner whatever. This section is made for an entirely different class of offenders than *authorized distillers*, because against distillers there are specific penalties, and punishments provided for every offense a distiller can commit in the other sections of the law which I have here cited.

SECTION 3281 provides, "That any person who carries on "the business of a distiller with intent to defraud the United "States of the tax on the spirits, or any part thereof, shall "not only be fined, *but all his distilled spirits and his distillery* "*shall be forfeited.*"

SECTION. 3257. "That any person engaged in carrying on "the business of a distiller, who defrauds or attempts to de- "fraud the United States of the tax or any part of the tax "on the spirits distilled by him, shall forfeit the distillery, "distilling apparatus and all distilled spirits owned by him, "and be fined and imprisoned besides."

These two sections are broad enough to cover every attempt by a distiller to defraud, or design or intent to defraud, the United States of the taxes or any part of the tax on the spirits distilled by him.

The information herein is, so far as it charges any offense, one which charges the offense committed by John W. Coffey, who is named therein as an authorized distiller, and clearly can not be embraced by section 3453. Now if, as your Honors hold, and we feel sure is law and the law of this case, that there must have been an intent, design, or attempt on the part of John W. Coffey to defraud the United States; this is an act of the person, an offense by him, and there can be no forfeiture unless it is *an offense by him.*

His amended answer fully sets forth that for these intents (offenses), designs and attempts he was indicted; for the very same *offenses* a judgment was taken against him, and there is no issue made on this. The goods must be forfeited for *his* offense if at all. For his offense he has, as the answer shows, been tried and a judgment had against him, and now "a *second punishment* is proposed in the *same court on the same* "*facts and for the same statutory offenses.*"

There are other decisions illustrating the same doctrine. But I would do injustice to your Honors' intelligence to weary you with citing decisions which are founded on doctrines as old as the English law. Blackstone, and Chitty,

and all the old writers lay it down, "That when a man has "been once found guilty or acquitted upon an indictment or "'*other prosecution*' before any court having competent juris- "diction of the offense, he may plead such in bar of any "'*subsequent proceeding*' for the same crime;" and this has always been so held in all our courts.

The only thing the court needs to inquire into is "the offense charged the same offense"? If so, then it is a bar. It is set out fully in the plea in bar in this case *that it is the same offense.* The amended answer is in the very words of the answer in the St. Louis whisky cases. The answer in the case of Choteau, 102 United States, is in the identical language of that answer. No issue was made by demurrer or otherwise; and on this answer alone it seems to us a reversal should be had. It seems also that either of the errors assigned and set forth herein are sufficient to reverse the case, and we respectfully ask an order to this effect, and that the court below be directed to order the property forfeited restored to claimant.

Respectfully submitted.

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AUTHORITIES CITED.

As to Jurisdiction—

Revised Statutes U. S., sec. 563, subsecs. 3 and 8; sec. 629, subsec. 4†.

As to Sufficiency of Information—

Revised Statutes U. S., secs. 3326, 3456, 3323, 3281, 3256, 3257, 3296, 3452.

95 U. S., p. 571, United States v. Two Hundred and Five Barrels Distilled Spirits.

7 Cranch, 389, The Hoppett.

4 Bissell, pp. 27, 28, United States v. Distillery.

2 Bond, p. 78, United States v. Seventy-eight Cases Books.

95 United States, p. 586.

Conkling's Treatise, 5th ed., 548.

Rule 22, Supreme Court Rules.

On the Plea in Bar—

102 United States, 602, United States v. Choteau.

4 Dillon, 129, United States v. McKee.

1 Root, 196, Boles v. Lynes.

Bishop's Criminal Law, 834.

Revised Statutes U. S., secs. 3456, 3281, 3257, 3453.

See also Brief filed herewith in case No. 1039, which involves same question.s

117-283

FILED
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JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN W. COFFEE, Claimant of one copper still, &c., Plaintiff in Error,
vs.
THE UNITED STATES.
} No. 92.

ERROR TO UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF KENTUCKY.

Brief for the United States.

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ERROR TO UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF KENTUCKY.

Brief for the United States.

This is an information filed by the Government to enforce the forfeiture of a distillery and its contents for violations of the internal-revenue law on the part of the claimant, John W. Coffee.

The information (R., pp. 1 and 2) proceeds on the following grounds:

1. That the claimant changed the stamps, marks, and brands on certain casks and packages containing distilled spirits.

2. That he put into certain casks and packages spirits of greater strength than was indicated by the inspection mark thereon.

3. That he fraudulently used casks and packages having inspection marks and stamps thereon for the purpose of selling other spirits and spirits of different quality and quantity from the spirits previously inspected therein, and attempted to defraud and did defraud, the United States of the tax on the spirits distilled by him.

On the 7th of October, 1881, an amendment of the information (R., pp. 9 and 10) was filed. It alleges:

1. That the claimant defrauded and attempted to defraud the Government of the tax on part of the spirits distilled by him.

2. That the tax on the spirits in question had not been paid, and that the spirits were found in claimant's possession for the purpose of being removed and sold by him to avoid paying the tax.

3. That the claimant removed from warehouse and sold certain packages of spirits without paying the tax thereon.

On the 30th August, 1881, the claimant intervened (R., pp. 4, 5), and then demurred to (R., p. 11) and answered the *amended libel* (R., pp. 11, 12).

The demurrer was overruled (R., p. 10), and on the 10th October, 1881, the parties went to trial, but the jury, being unable to agree, were discharged.

On the 18th October, 1881, the claimant filed an amended answer (R., pp. 13, 14), setting up in bar of this proceeding a former judgment of the same court, on a plea of guilty, in a criminal information against the claimaint founded on the same state of facts as are set out in the information in the case at bar, by which judgment the claimant was sentenced to pay a fine of $500.

Afterwards, to wit, on the 25th of February, 1882, the case was again tried, and the jury found for the United States. (R., pp. 14, 15.)

The claimant moved (R., p. 15) "to set aside the verdict and arrest the judgment" on the grounds following:

1. The verdict is not authorized by law and the facts in the case.

2. Because the defendant has been tried for the same offense herein charged in a former proceeding, a criminal information, and this court has no jurisdiction in forfeitures.

3. That the information itself is insufficient to sustain an action.

The Court denied the motion and entered judgment on the verdict. (R., pp. 15, 16.)

The Jurisdiction of the Circuit Court.

The denial of jurisdiction in the circuit court proceeds on an argument which is nothing short of an invitation to this court to repeal an act of Congress. Section 629 (R. S.) declares that the circuit courts shall have cognizance "*of all causes arising under any law providing internal revenue.*"

Because the jurisdiction *in rem* mostly appertains to the district courts, it is contended that the clear language of the law shall not be allowed to have full effect, but must be qualified so as to preserve, we presume, the harmony of the federal judicature. And this sort of argument is pressed with full knowledge of section 3453 (R. S.), which provides that the forfeiture denounced by it shall be enforced by a proceeding "*in the nature of a proceeding in rem in the circuit court or district court of the United States for the district where such seizure is made,*" showing that *Congress* did not regard it as a very serious matter to give the cir-

cuit courts a concurrency of jurisdiction with the district courts in proceedings *in rem*.

The Information.

The first ground of objection proceeds on the theory that it is founded on section 3326 (R. S.), which denounces no forfeiture. But the information is, undoubtedly, a proper one under section 3257, which *does* denounce a forfeiture, and is in these words:

> "Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than $500 nor more than $5,000, and be imprisoned not less than six months nor more thon three years."

This objection, therefore, falls to the ground.

It is next said that the third count of the amended information is founded on section 3456 (R. S.), which is in these words:

> "If any distiller, rectifier, wholesale liquor dealer, or manufacturer of tobacco or cigars, shall know-

> ingly or willfully omit, neglect, or refuse to do or cause to be done any of the things required by law in the carrying on or conducting of his business, or shall do anything by this Title prohibited, if there be no specific penalty or punishment imposed by any other section of this Title for the neglecting, omitting, or refusing to do, or for the doing or causing to be done the thing required or prohibited, he shall pay a penalty of $1,000; and if the person so offending be a distiller, rectifier, or wholesale (liquor) dealer, all distilled spirits or liquors owned by him or in which he has any interest as owner, or if he be a manufacturer of tobacco or cigars, all tobacco or cigars found in his manufactory shall be forfeited to the United States."

And that as there is a specific penalty elsewhere in the law for the offense charged in that court it cannot be sustained.

But why cannot this count be sustained under said section 3257 (R. S.) which is leveled at *distillers* especially, as is also section 3281, amended by section 16 of the act of February 8, 1875 (18 Stat., 307), under which act the information might properly be sustained?

Counts 1 and 2 of the amendments of the information are sought to be disconnected from the original information to which they refer, and

objection is made that they are wanting in several averments which are contained in the original information. The whole proceeding is for one and the same forfeiture, and it is submitted that the reference to the original petition in the amendments which are to be read as a part of the original petition is equivalent to a repetition in the latter of the matter referred to.

It is matter of common practice to refer in one count of a declaration to another count to save repetition.

The objection to the absence of a formal prayer for judgment of forfeiture or condemnation in the amendments of the original information is difficult to comprehend. The original information contains a formal prayer, and the additional counts are to be taken as inserted in the original information and not as supplanting it.

It seems hardly necessary to follow the counsel for the plaintiff in error in his nice criticism of the several counts of the information, in view of the settled law that where an information con-

taining several counts proceeds for only *one* forfeiture, and there is a general verdict for the Government, judgment will not be arrested or reversed on error if there be a single good count in the information, (Snyder *v.* U. S, 112 U. S., 216.) This renders it unnecessary to consider the demurrers.

Now, it certainly cannot be maintained that *nothing* charged in the information is validly charged. For example, the first count of the supplemental information, containing the amendments, is clearly within the principle of what this court says with reference to the fourth count of the information in United States *v.* Simmons (96 U. S., 363, 364).

The Plea in Bar.

The record presents no question as to the plea in bar of a former conviction. The plea avers that the former proceeding, the judgment in which is pleaded in bar of this information, was in the same court as that in which this proceeding was begun. The question raised by the plea was,

therefore, a pure question of law, and could not possibly have entered into the verdict (9 Wall., 38, Basset *v.* United States), inasmuch as it was in no sort the province of the jury to inform the court as to its own records.

It was the duty of the claimant to support his plea by the production to the court of the record to which the plea referred, and, not having done so, he must be taken to have *waived the defense.* The failure of the record to indicate any action of the court on the subject shows conclusively that the plea was waived.

But the answer or plea of *autrefois convict* is no bar. The forfeiture claimed in the information is for a *delictum* of the *res* proceeded against, without any regard to personal misconduct. (Dobbins' Distillery *v.* United States, 96 U. S., 401.)

Surely Congress had the power to *superadd* forfeiture of property to fine and imprisonment, and it has done so, and it is a strange argument that the Government cannot have the forfeiture

of the guilty property because some claimant of it has been convicted in a criminal prosecution growing out of the conditions which made the property liable to seizure and condemnation.

The case of United States *v.* Chouteau has no application here (102 U. S., 603), because in that case the Government was trying to recover on the distiller's bond the same identical penalty that had been already compounded between him and the Government. Of course it was out of the question for the Government to proceed criminally and get satisfaction, and then turn around and institute a civil action against the distiller's sureties *for the very same thing.* There is no resemblance between the two cases.

Besides, it is to be remarked about that case, that it was not a judgment in the former proceeding that was relied upon as a bar, for there was no judgment, but it was a compromise between the Government and the distiller, and that contract was allowed to operate as a bar of the subsequent proceedings according to its true intent

and meaning, which intent and meaning would have been violated by entertaining the suit subsequently instituted.

It is therefore respectfully submitted that there is no error in the record.

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